Supreme Court, U.S.
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No. 88-655

IN THE

Supreme Court of the United States of America

October Term, 1988

JOHN GRECO, LINDA JO GRECO,
MARY JOSEPHINE CASTRO, JO ANN GRECO,
CYNTHIA MARIE GRECO, and
EXCHANGE BANK OF TAMPA,
as Trustee, in the name of Tampa Wholesale Company,
Petitioners,

v.

TAMPA WHOLESALE COMPANY and
CLERK OF THE CIRCUIT COURT
OF HILLSBOROUGH COUNTY, FLORIDA,
Respondents.

On Petition for Writ of Certiorari to the District Court of Appeal of Florida, Second District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. WHETHER SECTION 28.24(13), *FLORIDA STATUTES,* WHICH AUTHORIZES FLORIDA'S COURT CLERKS TO MAKE A CHARGE FOR RECEIVING MONEY INTO THE REGISTRY OF THE COURT, CONSTITUTES AN UNWARRANTED AND UNREASONABLE TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHERE THE PETITIONER COULD HAVE OBTAINED AN ORDER AVOIDING ANY DEPOSIT INTO THE REGISTRY.

II. WHETHER SECTION 28.33, *FLORIDA STATUTES,* WHICH AUTHORIZES FLORIDA'S COURT CLERKS TO MAKE A CHARGE FOR MANAGING FUNDS WHICH ARE INVESTED PURSUANT TO THAT STATUTE, CONSTITUTES AN UNWARRANTED AND UNREASONABLE TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHERE THE FUNDS WERE VOLUNTARILY LEFT WITH THE CLERK OF THE COURT.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE WRIT 4

I. The Petition has presented no basis by which section 28.24(13), *Florida Statutes,* can be held unconstitutional 4

II. The Petition has presented no basis by which the section 28.23, *Florida Statutes,* can be held unconstitutional 8

CONCLUSION 11

APPENDIX 13

Transcript of testimony and proceedings, July 2, 1987 A-1

TABLE OF AUTHORITIES

Cases: Page

Adkins v. Children's Hospital of District Columbia,
261 U.S. 525 (1923) 10

B & M Coal Corporation v. United Mine Workers of America,
501 N.E. 2d 401 (Ind. 1986), *cert. denied sub nom. Spencer County Clerk v. B & M Coal Corporation,*
_____ U.S. _____, 107 S.Ct. 2184 (1987) 10

In re *Brooks & Woodington, Inc.,*
505 F.2d 794 (7th Cir. 1974) 5

Greco v. Tampa Wholesale Company,
522 So. 2d 506 (Fla. Dist. Ct. App. 1988),
cert. denied, 531 So. 2d 168 (Fla. 1988) 4, 7, 10

James Talcott, Inc. v. Allahabad Bank, Ltd.,
444 F.2d 451 (5th Cir.), *cert. denied sub nom City Trade & Industries, Ltd v. Allahabad Bank, Ltd.,* 404 U.S. 940 (1971)..... 5

Manes v. Goldin,
400 F.Supp. 23 (E.D.N.Y. 1975), *aff'd,*
423 U.S. 1068 (1976)..... 5

Murphy v. Travelers Ins. Co.,
534 F.2d 1155 (5th Cir. 1976) 5

Murillo v. Bambrick,
681 F.2d 898 (3rd Cir.), *cert. denied,*
459 U.S. 1017 (1982)..... 6

Permian Basin Area Rate Cases,
390 U.S. 747 (1968)..... 6

Roberts v. Askew,
260 So. 2d 492 (Fla. 1972)..... 8

U.S. v. Kras,
409 U.S. 434 (1973)..... 5

Webb's Fabulous Pharmacies, Inc. v. Beckwith,
449 U.S. 155 (1980).....passim

Other:

Section 28.24, *Florida Statutes* 3, 4, 5, 9
Section 28.33, *Florida Statutes* 3, 8, 9
Section 55.141, *Florida Statutes*..... 3
Section 57.041, *Florida Statutes*..... 4, 8
Section 86.091, *Florida Statutes*..... 3
Section 687.01, *Florida Statutes*..... 2

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EXCHANGE BANK OF TAMPA,
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TAMPA WHOLESALE COMPANY and
CLERK OF THE CIRCUIT COURT
OF HILLSBOROUGH COUNTY, FLORIDA,
Respondents.

On Petition for Writ of Certiorari to the District Court of Appeal of Florida, Second District

The Respondent, Richard Ake, Clerk of the Circuit Court of Hillsborough County, Florida, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the opinion of the District Court of Appeal of Florida, Second District, entered in this proceeding. That opinion is reported at 522 So.2d 506 (1988).

STATEMENT OF THE CASE

Petitioners' counsel has artfully weaved the major thrust of his argument into his statement of the case necessitating some refinement to present a clear picture of the facts.

Tampa Wholesale Company was a closely held family corporation. At the time the dispute commenced, Petitioner, John Greco and his daughters owned a one-fourth interest in the Company. Two brothers and a brother-in-law along with their families held 75% interest. The portion of the family representing seventy-five percent of the ownership wanted to sell the company. John Greco resisted the sale.[1]

The business was sold for $24 million. John Greco on his own behalf and on behalf of his daughters brought a dissenter's rights action under appropriate Florida statute for determination of the fair value of his portion of the sale's proceeds. John Greco claimed that he and his daughters were entitled to $19.6 million[2] of the $24 million sale's proceeds for his share, while the other family members concluded that he was only entitled to $4.6 million. The lawsuit was vigorously contested. It resulted in a judgment on December 29, 1986, eight years after the sale. The circuit court concluded that John Greco was entitled to $5.25 million as his share of the proceeds plus $5 million in interest which had accrued during the eight year period between the date of sale and date of judgment. (Pet. A 19 - A 32)

Under Florida law, a judgment creditor is entitled to interest.[3] In this case the daily interest rate amounted to about $3,400 on the December 29, 1986 judgment.

John Greco refused to accept payment of the judgment to preserve his appellate rights. It appears also he refused to discuss any alternative deposit mechanism. (A 8 - A 9)

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1 Pet. A 20 - A 22. For the purposes of this brief all references to John Greco also include the other Petitioners.

2 For purposes of simplicity this amount and others have been rounded.

3 Fla. Stat. § 687.01 (1987).

The judgment debtor was faced with a dilemma in that the 1986 Tax Reform Act resulted in substantially increased federal income taxes if the judgment was not paid before January 1, 1987. Facing the increased income tax probability, the $3,400 daily interest charge, and an uncooperative Petitioner, the judgment debtors protected themselves by depositing the judgment proceeds in the registry of the court.

Florida law authorizes such a deposit.[4] Section 28.24(13), *Florida Statutes,* establishes part of the funding mechanism for operating the offices of the clerks of the courts, which includes the one percent statutory service charge for receiving these funds into *custodia legis.* The Clerk of the Circuit Court is not required to invest the funds for the benefit of the depositors, but if they are invested, Section 28.33, *Florida Statutes,* establishes the statutory management fee, 10% of the income received. The Clerk promptly invested the Greco judgment proceeds. The deposit was continuously managed and invested by the Clerk's office for a period of approxiately six months until July 8, 1987. During this period of time the deposit earned over $300,000: approximately $270,000 of this sum was remitted for the benefit of the judgment creditor, and approximately $30,000 was retained as a service fee for managing the account.

Petitioner filed a motion with the circuit court for the return the clerk's fees to the court registry. (Pet. A9) In his motion, John Greco claimed that the Clerk's service charges were unconstitutional but ignored the statutory requirement that the State Attorney General be served with a copy of the complaint[5] so that he might be heard on the issue.

The circuit court denied the motion to refund the fees. Although the judge received rebuttal testimony supporting the reasonableness of the Clerk's service fee, the court's order left the door open for John Greco to attack the service fee in an independent proceeding should Greco elect this remedy to more fully explore the issues. (Pet. A 18)

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4 Fla. Stat. § 55.141 (1987).
5 Fla. Stat. § 86.091 (1987).

Fees charged by clerks of the circuit courts are a taxable cost in litigation,[6] but there is no indication that John Greco sought to tax these costs against the judgment debtor who elected to use the court registry.

Hearing testimony on the cost of registry operations and reasonableness of the fees, the circuit court found no constitutional impairment to their collection. (A 9) The District Court of Appeal for the Second District of Florida affirmed this judgment based upon the factual findings of the circuit court and the relevant law. *Greco v. Tampa Wholesale Company,* 522 So.2d 506 (Fla. Dist. Ct. App. 1988). The Florida Supreme Court declined discretionary jurisdiction. *Greco v. Tampa Wholesale Company,* 531 So.2d 168 (Fla. 1988).

This Petition for Certiorari addresses two issues:

1. Was the one percent charge for receiving funds into the registry of the court an unconstitutional taking of John Greco's property without compensation when he could have obtained an order avoiding any deposit into the registry?

2. Was the charge for maintaining and investing John Greco's funds after they were deposited in the registry and then left there voluntarily an unconstitutional deprivation of private property?

REASONS FOR DENYING THE WRIT

I.

The Petition has presented no basis by which section 28.24(13), *Florida Statutes,* can be held unconstitutional.

The Petitioner has presented no rational argument to support giving him special treatment. The registry deposit was not required by law. Without such a requirement an essential element

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6 Fla. Stat. § 57.041 (1987).

relied upon by the Court in *Webb's Fabulous Pharmacies, Inc. v. Beckwith,* 449 U.S. 155 (1980), is missing. In addition, the Petitioner has an adequate remedy, a motion to tax costs, to protect his interest without seeking to invalidate the legislative funding mechanism for the office of the clerk of the court.

A. No rational basis presented for invalidating the state statute.

In the *Webb* case, the Clerk levied a one-time charge for receiving registry funds. He then invested those funds and kept all the interest. The State authorized the Clerk to keep all interest earned on the deposit because, in the opinion of the Florida courts, the registry moneys were public moneys. This honorable Court determined that although the statute was presumptively valid on its face, when Florida courts construed the statute to mean that private litigant's funds were public money, the Florida courts went too far. Interest earned on private deposits should follow the deposit.[7]

The *Webb* decision did not invalidate section 28.24(13), *Florida Statutes,* which authorized the Clerk to make a one-time charge for receiving registry funds. In fact, that decision found no problem with the reasonable charge for this service.[8]

The Florida legislature set the fee, presumably on the theory that litigants should pay part of the cost of litigation rather than imposing the full cost on the taxpayers generally. This concept has been approved by the Supreme Court in the past.[9] In determining the reasonableness of these government-imposed fees, the Court should examine the total effect of the rate to see if it is

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7 James Talcott, Inc. v. Allahabad Bank, Ltd., 444 F.2d 451, 463 (5th Cir.) *cert. denied sub nom* City Trade & Industries, Ltd. v. Allahabad Bank, Ltd., 404 U.S. 940 (1971); Murphy v. Travelers Ins. Co., 534 F.2d 1155, 1165 (5th Cir. 1976); In re Brooks & Woodington, Inc., 505 F.2d 794, 799 (7th Cir. 1974).

8 Petitioners concede that *Webb* did not deal with this statute and that it dealt exclusively with section 28.33, Florida Statutes. Pet. 13.

9 Manes v. Goldin, 400 F.Supp. 23 (E.D.N.Y. 1975), *aff'd,* 423 U.S. 1068 (1976), and U.S. v. Kras, 409 U.S. 434 (1973).

reasonable and should not examine individual transactions.[10]

Petitioner is looking at the equal protection clause through the wrong end of the telescope. In *Murillo v. Bambrick,* 681 F.2d 898 (3rd Cir.) *cert. denied* 459 U.S. 1017 (1982), the court said the equal protection clause is violated when different burdens are imposed on indistinguishable individuals:

> The first task of a court in evaluating an equal protection claim under the rational relation test is to identify with particularity the precise classification alleged to be irrational. Obviously, it would constitute an irrational act—and hence would offend the Constitution's promise of "equal protection of the laws"—were a state to impose differing burdens upon individuals who are, in all relevant respects, indistinguishable.[11]

The Petitioner argues that the Court should go behind the legislative concept of a uniform and equal fee on all litigants and replace it with one in which the burden would be upon the court to set an individual fee on each individual deposit based on the cost of handling that particular deposit. He contends that it is unfair to charge the same percentage upon the rich and mighty litigants as that imposed upon the widow's mite.

Aside from being ironic—that the Petitioner would invoke the equal protection clause of the Constitution to promote a less than equal charge for himself—the argument fails to cite any legislative or common law principle to support the demand for favored treatment. The Petitioner not only failed to find any legal support for his proposition, he failed to lay out any logical guidelines that the Court might follow in determining the reasonableness of a charge for receiving a deposit. He also failed to rebut the circuit court's factual determination that the fee was

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10 Permian Basin Area Rate Cases, 390 U.S. 747, 767 (1968).
11 Murillo, 681 F.2d at 906.

reasonable based upon the unrebutted evidence.[12]

B. Registry Deposit Not Mandatory.

In order for a governmental taking to be compensable under the Fifth Amendment, the taking must be forced. An essential element of the *Webb* decision is that "the deposit in the registry of the court is *required* by state statute."[13] In the present case, the Petitioner could have easily avoided the statutory fee by either accepting the judgment proceeds or by arranging for an alternate form of deposit as he did later on July 8, 1987.

In the record on appeal, it appears that the Petitioner was the architect of his own condition. This heated internecine dispute was submitted to the court system because it could not be resolved within the family. The apparent bitterness between the litigants frustrated communication and blinded the Petitioner to rational cost-free alternate solutions. The judgment debtors were keenly aware of the impact of interest on them. During the course of litigation the amount they owed doubled merely because of the interest charge. They could have avoided $5 million in damages by depositing the money they acknowledged to be due into the registry of the court at an earlier date. On December 29, 1986 when the judgment was entered, the judgment debtors were faced not only with continuing interest, now at the rate of $3,400 per day, but also an unfavorable tax result. (A 9) They had to take action, but John Greco refused to cooperate. The Clerk's charges could have been avoided if the parties had cooperated in December as they did the next July. With respect to the one-time service fee, it cannot be argued that the charge was a forced exaction. Even if the Court were to conclude that the fee was excessive, it was a charge that was voluntarily incurred, not pound-

12 Uncontroverted testimony shows that the fees received under this statute *and* under section 28.33 do not even cover the cost of operating the departments responsible for the handling of registry funds. See A 3 - A 8. The proper test is "whether the clerk was, in effect, accumulating revenues from the statutorily empowered fee far in excess of the cost of registry-related judicial proceedings." Greco v. Tampa Wholesale Co., 522 So.2d at 508, citing Murillo v. Bambrick, 681 F.2d 898, 911 (3rd Cir.), *cert. denied*, 459 U.S. 1017 (1982).

13 Webb, 449 U.S. at 164.

age mandated by State action.

C. The Charge is a Taxable Cost.

John Greco has argued that he was precluded from accepting the judgment proceeds because he would waive his right to appeal if he accepted the benefits of the judgment. As pointed out above, this argument ignores the alternative cost-free remedy that was as available when the deposit was originally made as it was six months later. It also ignores the fact that if the judgment debtors had erred in depositing the funds in the registry of the court to the detriment of John Greco, he could have sought relief by requesting the court to tax the Clerk's fee to the judgment debtors as a cost of the litigation.[14] Under the circumstances, the court could have readily determined whether or not John Greco had been disadvantaged by his brothers' actions in making the registry deposit. If the court concluded they had done wrong, John Greco could have obtained judicial relief. Instead, he sought to challenge a state statute in a post-trial motion that had nothing to do with the merits of the principal lawsuit. Indeed, this avenue remains open to the Petitioners under Florida law since a motion to tax costs may be heard up until a reasonable time after an appeal.[15] The Supreme Court should be reluctant to accept discretionary jurisdiction over a case in which an adequate legal remedy is otherwise available.

II.

The Petition has presented no basis by which section 28.33, *Florida Statutes,* can be held unconstitutional.

The *Webb* decision focused on the charge under section 28.33, *Florida Statutes* when it determined that a former rendition of this section was unconstitutional. The underlying defect supporting the ruling in the *Webb* case was not the language of the statute, but the Florida court's construction of the language concluding that registry funds were public moneys. When the

14 See Fla. Stat. § 57.041 (1987).
15 Roberts v. Askew, 260 So.2d 492 (Fla. 1972).

Florida legislature revised section 28.33, *Florida Statutes,* in 1982 after the *Webb* decision, it recognized the mandate of the Court and the distinction between state funds held by the clerks and private funds held by the clerks. It concluded that the clerk could retain all the interest on state funds but only a reasonable portion of the interest on the funds of private litigants to compensate for the investment management services.

The Florida trial court after an examination of the factual circumstances of this case concluded that both charges are constitutional. One charge relates to the cost of performing the entire court registry function: hiring the people to receive and disburse money, accounting for the proceeds, segregating them from other trust funds, and disbursing them to the appropriate parties. The second charge relates to a different function, that of investing the funds in order to obtain a return for the benefit of the deposit's owner.

The Clerk was not compelled to invest the funds and the Petitioner was not compelled to keep the funds on deposit: if no investment were made, there would be no charge except the Section 28.24(13), charge for receiving, retaining, and disbursing the funds. Nevertheless, the Clerk is authorized to employ personnel to provide a betterment for the owner of the deposit. The Petitioner acceded when the Clerk took advantage of the State's pooled investment strength for his betterment. The betterment was very substantial, over $300,000 in six months. The legislative branch of the government determined that under these circumstances where the ultimate recipient of the deposit would receive a substantial benefit from the Clerk's extra effort it would be appropriate to cover the costs of this effort by a charge to the persons who benefit from the investment rather than imposing that cost upon the general taxpayers of the State.

Unfortunately, the Petitioner has not supplied the Court with any legislative history to enlighten us as to the rationale underlying the new statutory language. The Petitioner merely concludes that the legislative action was undertaken for the purpose of frustrating the common law developed in the *Webb* decision. The Petitioner

has the burden of proving the constitutional invalidity of the act beyond a reasonable doubt.[16] His unsupported conclusion not only falls far short of overcoming the reasonable doubt burden, it seeks to place upon the general taxpayers of the State the obligation to provide financial benefit for litigants at no cost. Once again, the equal protection doctrine is invoked to solicit preferred treatment. The argument should be dismissed out of hand.

The judicial bodies which reviewed the facts of the case found that the costs borne by the Clerk were reasonably related to the charge when viewed macroeconomically but also concluded that the Petitioner's stubbornness in requiring the deposit to be made into the registry of the court should not be used as a vehicle to obtain free government services when he could have at any moment in time terminated the charge by merely moving the funds to an alternative investment vehicle, which he ultimately did in July of 1987. The Florida District Court of Appeal stated,

> The Greco family members could have elected to immediately withdraw their money from the court registry. Had they done so the management investment fee would have been nominal. Instead, they allowed the fund to remain some six months before obtaining a court order to place the proceeds in a bank issued certificate of deposit.[17]

In a case analyzing clerk's fees in the light of *Webb* the Supreme Court of Indiana held, "Where a person entitled to his private funds elects to allow such funds to remain in the care of the clerk, he is not subjected to an unconstitutional 'taking'. . . ."[18]

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16 Adkins v. Children's Hospital of District of Columbia, 261 U.S. 525, 544 (1923).

17 Greco, at 508.

18 B & M Coal Corporation v. United Mine Workers of America, 501 N.E. 2d 401 (Ind. 1986), *cert. denied sub nom.* Spenser County Clerk v. B & M Coal Corporation, _____ U.S. _____, 107 S.Ct. 2184 (1987).

CONCLUSION

The Petitioner has failed to sustain any justification for the Supreme Court taking jurisdiction in this cause because

1. the registry deposit in question was not required by state action, it was a voluntary act of the litigants;

2. the Petitioner failed to exercise the court-offered opportunity to litigate the reasonableness of the fees in a forum susceptible to fact gathering;

3. the Petitioner failed to offer any testimony or legislative history demonstrating that the standard fee is unreasonable and failed to rebut the testimony relating to its reasonableness;

4. the Petitioner failed to exhaust his available judicial remedy of having the circuit court impose the Clerk's fee upon other parties as a taxable cost of litigation;

5. finally, the Petitioner benefited from the management of the registry deposit by the Clerk. It would be a travesty to allow John Greco to reap the rewards of that management and then transfer the cost of obtaining the benefits to the taxpayers of the State generally.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

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APPENDIX

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY

Case No. 79-4709
Division M

JOHN GRECO, et al.,
Plaintiffs,

v.

TAMPA WHOLESALE COMPANY, et al.,
Defendants.

TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

BEFORE:	HON. HUGH MACMILLAN Circuit Judge
TAKEN:	Hillsborough County Courthouse Tampa, Florida
DATE:	July 2, 1987
TIME:	9:00 A.M.
REPORTED BY:	Linda A. Mulhollan, RPR Deputy Official Court Reporter Notary Public

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[page 2]

* * *

APPEARANCES:

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* * *

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* * *

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* * *

[page 21]

THEREUPON,

ROGER GARNER,

having been duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. STIDHAM:

Q. Please state your full name.

A. Roger Garner.

Q. By whom are you employed?

A. The Hillsborough County Clerk of the Circuit Court.

Q. What capacity?

A. A budget analyst.

THE COURT: A what?

THE WITNESS: Budget analyst.

BY MR. STIDHAM:

Q. Are you involved with the handling of funds that are placed in the registry of the court?

A. I am not directly involved with the handling of funds.

Q. Are you familiar with how the funds are handled?

A. I'm familiar, yes.

* * *

[page 27]

BY MR. BAKAS:

Q. Roger, what's the name of the department that handles the handling of registry funds?

A. Trust accounting.

Q. And how many people are employed in that department?

A. There's approximately forty.

Q. And do you know the annual budget of the trust accounting department?

A. It's approximately six hundred thousand dollars.

Q. And what does the trust accounting department do? Explain that.

A. Basically they account for all money handled by the Clerk's office.

Q. And are the descriptions of that handling that you have just a few minutes ago, are those all the things they do or is it a lot more detailed?

A. There's quite a detail of checks and balances that must be made to make sure that the money is in the proper place.

Q. And how long does it take from the time a deposit is placed into the registry until the Clerk's office is satisfied that it's been properly taken in

[page 28]

and accounted for?

A. That's a four-day procedure.

Q. It takes four days from the time it's deposited?

A. Right.

Q. And what — and again, I know you're just being very general, but what occurs during that four-day period? What types of checks and balances or audits does the Clerk's office perform?

A. Okay. When it's first — well, the first audit, of course, is the cash receipt audit at the end of each day where they verify the receipts according to the register, the money we actually have on hand.

The next day they balance this same amount against the fiscal receipts and determine what accounts need to be credited.

Once that's done then the accounts — this record is sent to our data input department which prepares the posting to these accounts. And once that is accomplished this posting then goes to the audit department again to verify that it was done properly and then they make a run that actually posts the proper account.

Q. What happens after that?

A. Once the account if first actually posted

[page 29]

there would be — they would simply be there until another action was required.

In this case of registry funds we would have notified the investment department so we could have invested any excess funds.

Q. And tell us a little more about how the investment is handled and what the Clerk's office must do to handle and track and monitor the investments and then allocate the interest derived from the investments?

A. Okay. Every day, as I mentioned earlier, the cash recount department has to determine how much cash is needed or is surplus at that particular point for the registry account.

When this is determined, if it's surplus they call the investment department and the investment department would in turn call the State Board of Adjustment or Administration to notify them that we were going to have money to invest.

Then the trust accounting department would have to initiate a check request to, in this case, Sun Bank.

There's an elaborate procedure on writing checks also to verify that the correct amount is properly authorized.

[page 30]

Q. Would you explain that, please?

A. The first thing they do is write the check request and this is then verified against the authorization. And then it goes to data input which actually writes the check; data input in turn sends this check to the control department which is within the trust accounting.

They would again check the original documents to verify that the check agrees with the authorized documents. Then they

would have to get two people to sign it in the case of a large amount, and then one of the control people would hand-carry this down to the investment department.

The investment department's people would then hand-carry this to Sun Bank and Sun Bank would then wire the money to the State Board of Administration in Jacksonville.

Q. Now, are there any other steps or procedures of a major nature in the trust accounting department that you haven't described, haven't addressed?

A. I think that's basically all of them.

Q. That's the trust accounting department?

A. Right.

Q. Now, is that the only department that has

[page 31]

responsibilities and undertakes to handle or control registry funds?

Are there any other departments involved?

A. Okay. The first department that has responsibility would be the Circuit Civil Division.

Q. That's a separate department?

A. Right.

Q. And do you know what their annual budget is?

A. Their annual budget is approximately one point three million dollars.

Q. Okay. And what responsibilities do they have with respect to registry funds?

A. They have to monitor all the orders received in a particular case, which basically means they have to read the orders and determine from reading the order if — first off, on the case

of receiving in this registry, if there's an order to receive it into the registry of the Court. We can't receive until there's an order to do so.

Q. Do you also receive money pursuant to the judgment statute, the fifty-five

—

A. Right.

Q. Describe — go ahead

A. Okay. Once they determine there is an

[page 32]

order to receive money through the court and the person comes there to pay it, they will receive — they will have to docket it and they will, after verifying that it's received, then they will send a certified copy of that order to the trust accounting department so they will be aware of it.

Now in the case of disbursements, the circuit civil department has to monitor the orders to check to see if there is any order to disburse these funds.

Once they get such an order they docket it indicating that — what the order — that there is an order of disbursement.

Then they make a certified copy of that order and send it to trust accounting so that trust accounting will be aware that they need to disburse the money.

Q. All right. Do you know the annual estimated income from the service charges on registry fees?

There are two fees or charges that the Clerk collects regarding the registry fees, a service charge, and then there's a management investment fee.

With respect to the service charge, what amount is estimated to be derived from that statute?

[page 33]

A. Eighty-one thousand dollars.

Q. Okay. And from the investment management fee, how much money is expected from that?

A. Thirty-five thousand.

Q. That's a year?

A. That's right.

Q. Okay. And where do those funds go and how are those funds used in the Clerk's office?

A. They are used to cover the operating costs of the Clerk's office.

Q. And do they cover all the operating costs?

A. No. No way.

* * *

[page 44]

MR. MANEY: If we could bring Mr. Hiering down as a witness, I would propose that the point would be established that I spent most of Christmas Eve trying to work out this problem with Mr. Hiering to avoid just this sort problem with the Clerk of the Court, and I would further propose that we were unable to reach that decision.

I would further propose that the record will show we filed a motion to avoid this.

I would further propose to show why we told Mr. Hiering it was imperative that certain things be done before the end of the year.

THE COURT: As I recall, and I'm going by memory looking through my file, you set a hearing in West Palm Beach for some type of a nunc pro tunc order?

MR. MANEY: Exactly right. We filed a motion under the rule to get an order to deposit in the registry of the court because

at the time we filed the motion there had been no order, there has been no final judgment, and at that time we explained to Mr. Hiering why we were filing a motion and we wanted to get a

[page 45]

stipulation for entry of an order nunc pro tunc.

Now, it turned out we could not reach an agreement with Mr. Hiering at all as to what should be done in the event we prevail or that John should prevail.

So when the time judgment was entered before the end of the year we had no alternative left but to deposit the money with the registry of the court in order to effect tax consequences on behalf of our clients. It had to be effected.

So I point out there was good faith effort made to reach an agreement. There were motions. We couldn't reach it by agreement which is not unsual in this case. Therefore, we followed the letter of the law and did what had to be done.

MR. STIDHAM: Your Honor, I agree with Mr. Maney.

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[page 64]

THE COURT: I think at this time in the face of the argument and what I've heard today in view of the *Webb* case that the ten percent seems to a reasonable charge for handling the investment of these funds; and the statutory fees of the Clerk is two percent and that seems reasonable.